



April 18, 2007

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: CS Docket No. 97-80, Status of Refurbished Integrated Set-top Boxes under the  
Integration Ban

Dear Chairman Martin:

I am the Chief Executive Officer and co-owner of Adams Cable Equipment (ACE), a small, family-owned company based in Olathe, Kansas that specializes in refurbishing and redistributing previously used equipment for the cable industry. ACE was established in 1998 to meet a critical and growing need for affordably-priced set-top boxes and cable modems for small cable operators to deliver digital cable, broadband, and other advanced services to small-town and rural America.

It recently came to my attention that some small cable operators have asked the Commission to clarify that refurbished integrated cable set-top boxes are not “new” navigation devices that will be prohibited by the integration ban as of July 1, 2007.<sup>1</sup> No such action should be strictly necessary, since it is already clear that refurbished boxes are not “new” under the plain meaning of these terms, and under Commission and FTC precedent and policy. However, in its reply comments the Consumer Electronics Association (CEA) asked the Commission to prohibit operators from providing refurbished devices to consumers.<sup>2</sup> CEA’s request must be rejected because it ignores that refurbished boxes have previously been deployed, and that the Commission has already explicitly held that previously-deployed devices are not subject to the integration ban.

In its 1999 *Order on Reconsideration*, the Commission explained why the integration ban does not and should not apply to refurbished or other used devices, holding that the rule “is not ... intended to render equipment obsolete that has already been manufactured and deployed and

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<sup>1</sup> Section 76.1204(a)(1) of the Commission’s rules provides that as of July 1, 2007 “no [MVPD]... shall place in service *new* navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.” 47 C.F.R. § 76.1204(a)(1) (emphasis added).

<sup>2</sup> CS Docket 97-80, CSR-7109-Z, Comments of the Consumer Electronics Association on the NPG Cable, Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) at 1-2 (March 12, 2007).



still has a useful life.”<sup>3</sup> The Commission correctly recognized that consumers would be hurt by a wasteful premature abandonment of millions of dollars worth of existing equipment, and that it was sufficient to require MVPDs to have common reliance on separated security only for their new devices.

In reliance on the Commission’s determination, ACE has continued to purchase and refurbish thousands of used set-top boxes, which it typically sells to smaller and often rural operators. *All of the devices ACE receives have previously been deployed to end users.* Many of the devices refurbished by ACE are only approximately 1-3 years old and have many years of useful life ahead of them. The refurbishment process varies depending on the condition of the device received, but generally may include cleaning, replacement of batteries, restoration or replacement of the exterior, or replacement of the lens or resonator. ACE operates a 20,000 square foot facility and sends and receives devices to and from all parts of the country. Because of its expertise and volume, ACE is able to refurbish these devices more cost-effectively and efficiently than could small operators attempting to restore the condition of their own used inventory.

Because ACE obtains used devices at a discount, it is able to sell refurbished devices to operators at prices far lower than the price of new set-top boxes. Under the Commission regulations governing set-top box lease rates, operators are required to pass these savings on to consumers.<sup>4</sup> The lower cost of refurbished devices is especially critical to small operators who have only limited capital resources to tie up in set-top box acquisition. Thus, the savings small operators receive from the availability of refurbished set-top boxes have enabled them to deliver more advanced devices, such as HD and DVR set-tops, to their small and rural markets, directly advancing the goal of the 1996 Act for “the deployment ...of advanced telecommunications capability to all Americans.”<sup>5</sup> In addition, larger operators are better able to justify the introduction of new set-top box technologies to their customers because the existence of the secondary set-top box market enables them to obtain cash for their older, still-useful devices to partially fund their investment in new models.

The availability of refurbished devices also provides an important alternative source of equipment for small operators in instances in which a small operator is unable to obtain a sufficient inventory of new devices from the set-top box manufacturers on a timely basis. The Commission has recognized “the difficulties that small cable operators may face [in obtaining new set-top boxes] since manufacturers may prioritize orders from the largest cable operators.”<sup>6</sup> If small operators could not turn to refurbishers such as ACE when they cannot get boxes from

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<sup>3</sup> *Implementation of Section 204 of the Telecomm. Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd. 7,596 ¶ 35 (May 14, 1999). See also *Midcontinent Cable Co.*, CSR-5462-Z, Mem. Opinion & Order, DA 00-840, 15 FCC Rcd. 6244 (2000) (granting extension for deadline to measure a cable system’s amplitude characteristic at the subscriber terminal, where it would have required replacement of existing set-top boxes, explaining that “It is clear from the legislative history that cable operators, and ultimately subscribers, were not intended to bear the costs of replacing equipment prior to the end of its useful life.”)

<sup>4</sup> See 47 C.F.R. § 76.923.

<sup>5</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (codified in notes under 47 U.S.C. § 157).

<sup>6</sup> *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47, ¶ 10 (rel. Jan. 10, 2007).



manufacturers on time, they could be faced with being unable to provide digital, high-definition, or other services to requesting customers.

CEA argues that the continued availability of refurbished devices would undermine the objective that MVPDs have a common reliance on CableCARD devices.<sup>7</sup> As an initial matter, this is incorrect. ACE estimates that refurbished devices represent only 5% of the cable set-top boxes deployed each year. Moreover, over time, more and more of these refurbished devices will themselves be separated-security devices, so an exemption of refurbished devices will at most only have a short-term effect. But more importantly, CEA's request to prohibit refurbished devices in the name of increased common reliance must be rejected as surely as if CEA had proposed to change the plain meaning of the rule to prohibit the redeployment of the much greater number of non-refurbished used devices now in inventory. No party has suggested that all used boxes in inventory should suddenly be prohibited. There is no sensible reason to treat a subset of these still-useful devices differently simply because they need new batteries or have a scratch.

Because ACE's refurbished devices have been used, under any reasonable definition they are not "new." In fact, the Federal Trade Commission's long-standing policies generally prohibit refurbished consumer electronics equipment from being offered or marketed as "new."<sup>8</sup> In addition, Congress and the Commission have recognized in other transitional contexts that it would hurt consumers more than it would help them to apply new equipment rules to previously manufactured, refurbished equipment. For example, when the Commission established its phased-in requirement that new mobile phones include Automatic Location Identification functionality for E-911, it exempted activations of refurbished handsets: "The new handset activation benchmarks apply only to new handsets, not to new activations of older model or refurbished handsets."<sup>9</sup> Similarly, in implementing the hearing aid compatibility (HAC) requirements applicable to new telephones, the Commission found that it would be unnecessarily expensive to apply such rules to refurbished telephones, and that Congress had noted that "the issue [of refurbished legacy equipment] would disappear as old telephones are replaced by new ones."<sup>10</sup>

The Commission's prior decision to allow MVPDs to deploy previously-used refurbished integrated devices is consistent with federal policy, the interests of consumers, and the

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<sup>7</sup> CS Docket 97-80, CSR-7109-Z, Comments of the Consumer Electronics Association on the NPG Cable, Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) at 1-2 (March 12, 2007).

<sup>8</sup> See e.g., *In the Matter of Eastman Kodak Company Consent Order, Etc., In Regard To The Alleged Violation of the Federal Trade Commission Act*, Docket C-2291, Decision, 81 F.T.C. 539 (1972); see also *Enforcement Policy on Merchandise Which Has Been Subjected to Previous Use on Trial Basis and Subsequently Resold as New*, F.T.C., 34 Fed. Reg. 176-7 (1969).

<sup>9</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17,442, fn. 62 (rel. Sept. 8, 2000).

<sup>10</sup> See *Access to Telecommunications Equipment and Services by the Hearing Impaired and other Disabled Persons*, First Report and Order, 4 FCC Rcd 4,596 (May 11, 1989). See also *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512, ¶ 40 (rel. Oct. 30, 1981) (determining that refurbished CPE should not be treated as new for the purpose of complying with the FCC's bifurcation schedule and explaining that "bifurcation should not affect the customary manner in which a carrier refurbishes, maintains, or recycles its regulated equipment.").



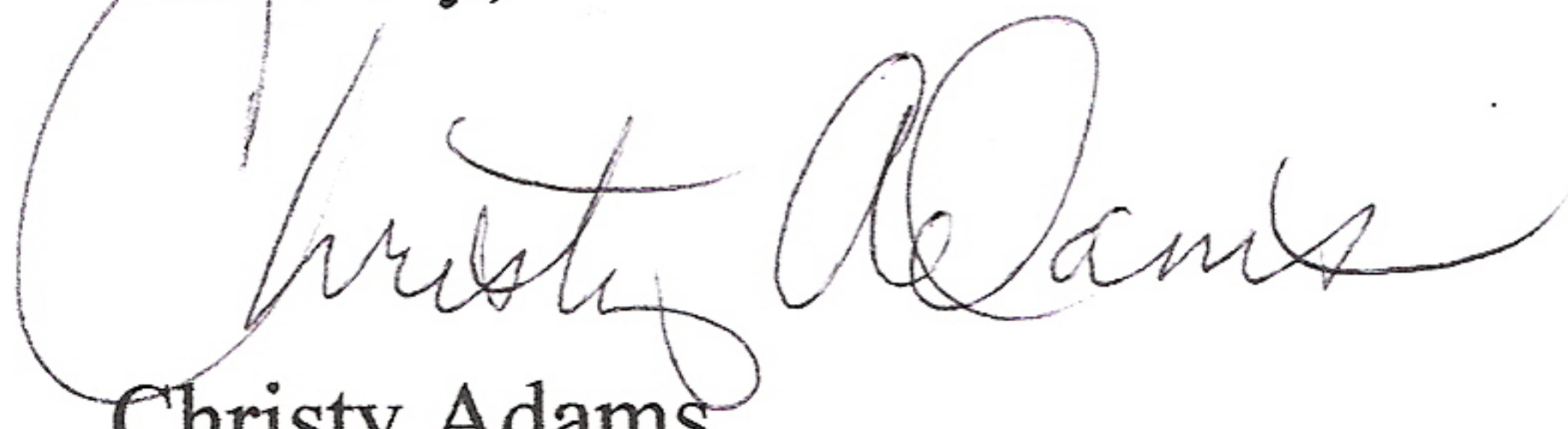
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Commission's goal of promoting the deployment of advanced services to rural America. The Commission should therefore reject CEA's argument and clarify that the integration ban means what it says – that only "new" integrated devices are prohibited, and that operators may continue to deploy refurbished set-top boxes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christy Adams".

Christy Adams

Chief Executive Officer

Adams Cable Equipment